

Agreement between the Government of the People's Republic of China and the Government of the Italy concerning the Encouragement and Reciprocal Protection of Investments

The Government of the People's Republic of China and the Government of Italy (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation between both countries,

Intending to create favourable conditions for investments by nationals and companies of either country in the territory of the other country and

Recognizing that encouragement and protection of such investments will benefit the economic prosperity of both countries,

Have agreed as follows:

Article 1.

Either Contracting Party shall promote as far as possible the investments in its territory by nationals or companies of the other Contracting Party, permit such investments according to its law and regulations and accord such investments equitable and reasonable treatment.

Article 2.

For the purpose of this Agreement:

(1) The term "investment" means every kind of asset accepted in accordance with the respective laws and regulations of either Contracting Party, and more particularly, though not exclusively:

(a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges, usufructs and similar rights;

(b) Shares of companies and other kinds of interest;

(c) Claims to money utilized with the purpose of creating an economic value or to any performance having an economic value;

(d) Copyrights, industrial property (including trade marks), technical processes, know-how and trade-names;

(e) Concessions under law, including concessions to search for, extract or exploit natural resources. Any admitted alteration of the form in which assets are invested shall not affect their classification as investment.

(2) The term "returns" means the amounts yielded by an investment for a definite period of time as profits, interests, capital gains, dividends, royalties, fees and other legitimate returns.

(3) The term "investor" means every national or company of either Contracting Party making investments in the territory of the other Contracting Party.

(4) The term "national" means every physical person who, according to the respective law of each Contracting Party, is considered a citizen of that Country.

(5) The term "company" means any legal entity established in the territory of either Contracting Party according to its laws and regulations and having its seat within its territory.

Article 3.

(1) The treatment accorded to the investments by nationals or companies of either Contracting Party (in the territory of the other Contracting Party) shall not be less favourable than that accorded to the investments by nationals or companies of any third State.

(2) The treatment accorded to the activities associated with investments by nationals or companies of either Contracting Party (in the territory of the other Contracting Party) shall not be less favourable than that accorded to the activities associated with investments by nationals or companies of any third State.

(3) The treatment mentioned above shall not apply to any advantage accorded to nationals or companies of a third State by either Contracting Party based on the membership of that Contracting Party in a Customs Union, Common Market or Free Trade Zone or based on an agreement concluded between that Contracting Party and a third State on avoidance of double taxation, or for facilitation of frontier trade.

Article 4.

(1) Investments by nationals or companies of either Contracting Party shall enjoy adequate protection in the territory of the other Contracting Party.

(2) Either Contracting Party may, for the public interest, expropriate, nationalize or adopt other similar measures concerning the investments in its territory by nationals or companies of the other Contracting Party. But compensation shall be granted.

The compensation shall be equivalent to the value of the investments at the time when the expropriation was declared.

The payment thereof shall be convertible, freely transferable and without undue delay.

(3) When investments by nationals or companies of either Contracting Party suffer losses owing to war, other armed conflict, a state of national emergency or other similar events in the territory of the other Contracting Party, they shall be accorded the treatment not less favourable than that accorded to the nationals or companies of any third State.

(4) Nationals or companies of either Contracting Party shall enjoy most favoured-nation treatment in the territory of the other Contracting Party in respect of the matters provided for in the present Article.

Article 5.

(1) Disputes on matters mentioned in paragraph 2, Article 4 concerning the conformity of the expropriation with the laws and regulations of the Contracting Party which made the expropriation may, upon the request of the interested Party, be submitted to the competent court of that Contracting Party which made the expropriation.

(2) The dispute over the amount of the compensation mentioned in paragraph 2, Article 4, shall be settled according to the provisions provided in (4) (Ad Article 5) in the Protocol.

Article 6.

Either Contracting Party shall, within the scope of its laws and the regulations, ensure the free transfer of the property made as an investment in its territory by nationals or companies of the other Contracting Party, which is as follows:

(1) Returns;

(2) Royalties deriving from incorporeal rights as defined in Letters d) and e) of Paragraph 1, Article 2 ;

(3) Instalments in repayment of loans aiming at direct participation in the investments;

(4) Amounts spent for the management of the investments in the territory of the other Contracting Party;

(5) Additional funds necessary for the maintenance of the investment in the territory of either Contracting Party;

(6) The value of partial or total assignment and/or liquidation of the investments, including a liquidation effected as a result of any event mentioned in Paragraph 3 of Article 4 .

The nationals of either Contracting Party working in the territory of the other Contracting Party because of an investment will be permitted to transfer to their own country all the remaining part of their salary after payment of tax and deduction of

their living expenses spent therein.

Article 7.

In case one Contracting Party has granted any guarantee against non-commercial risks in respect of an investment by its investor in the territory of the other Contracting Party and has made payment to such investor under the guarantee, the other Contracting Party shall recognize the transfer of the rights of such investor to the one Contracting Party and the subrogation of the one Contracting Party to such rights.

The rights subrogated by the one Contracting Party shall not exceed the original rights of such investor. As regards the transfer of payments to be made to the Contracting Party by virtue of such subrogation Article 4 and 6 shall apply respectively.

Article 8.

Transfers under Article 4, 6 and 7 shall be made without undue delay after the performance of the fiscal burdens. Such transfers would be made in convertible currency at the official rate of exchange existing on the date the transfer is made.

Article 9.

If the treatment to be accorded by one Contracting Party to nationals or companies of the other Contracting Party in accordance with its laws and regulations or other specific provisions is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

Article 10.

The present Agreement shall also apply to investments made prior to the entering into force of this Agreement by nationals or companies of the People's Republic of China in the territory of the Republic of Italy according to its laws and regulations in force, and investments by nationals or companies of the Republic of (Italy in the territory of the People's Republic of) China according to its laws and regulations in force.

Article 11.

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled, as far as possible, through friendly consultations by both Parties through diplomatic channels.

(2) If such disputes cannot be settled within six months from the date on which either Contracting Party informs in writing the other Contracting Party, they shall, at the request of either Contracting Party, be submitted for settlement to an ad hoc international arbitral tribunal.

(3) The ad hoc international arbitral tribunal mentioned above shall be established as follows: The arbitral tribunal is composed of three arbitrators. Each Contracting Party shall appoint one arbitrator; the two arbitrators propose by mutual agreement the third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties, and the third arbitrator will be appointed as the Chairman of the tribunal by both Contracting Parties.

(4) If the appointments of the members of the Arbitral Tribunal are not made within a period of six months from the date of request for arbitration, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments.

Should the President be a national of one Contracting Party, or should he not be able to perform this designation because of other reasons, this task shall be entrusted to the Vice-President of the Court, (or to the next senior Judge of the Court) who is not a national of either Contracting Party.

(5) The Arbitral Tribunal shall determine its own procedure.

The Arbitral Tribunal shall decide its award by a majority of votes. Such award is final and binding upon the two Contracting Parties.

(6) Each Contracting Party shall bear the cost of its own member and of its counsel in the arbitral proceedings. The cost of the chairman and remaining costs shall be borne in equal parts by both Contracting Parties.

Article 12.

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations.

Article 13.

(1) The present Agreement shall enter into force (three months after the notification between the Contracting Parties of the accomplishment of their) respective internal procedures.

It shall remain in force for a period of ten years and shall continue in force thereafter for another period of five years and so forth unless denounced in writing by either Contracting Party one year before its expiration.

(2) In respect of investments made prior to the date of termination of the present Agreement, the provisions of Article 1 to 12 shall continue to be effective for a further period of five years from the date of termination of the present Agreement.

Done in duplicate at Rome on January 28, 1985 in Chinese, Italian and English languages. The three texts are equally authentic. If there is any difference in the interpretation, the English text shall prevail.

For the Government of the People's Republic of China (Chen Muhua)

For the Government of the Republic of the Republic of Italy (Capria>

On signing the Agreement between the Government of the People's Republic of China and the Government of Italy concerning the Encouragement and Reciprocal Protection of Investments, the undersigned Plenipotentiaries have, in addition, agreed on the following provisions which should be regarded as an internal part of the said Agreement.

(1) This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in the maritime zone or on the continental shelf where the other Contracting Party exercises its sovereignty, sovereign rights or jurisdiction according to international law and its internal laws and regulations.

(2) Ad Article 3 The "activities" mentioned Article 3, Paragraph 2 of this Agreement mean the management, maintenance, use and enjoyment of an investment as well as entry, stay and travel of nationals connected with the investment. The "treatment less favourable than" mentioned in Article 3, Paragraph 2 of this Agreement means, compared with the treatment accorded to investment activities of national or companies of a third State, restricting the purchase of raw or auxiliary materials, of power or fuel or of means of production or operation of any kind, as well as any other measure having similar effects.

(3) Ad Article 4 The provisions of Paragraph 2 of Article 4 shall apply to any measure of expropriation, nationalization or other similar measures concerning investments made by nationals or companies of the other Contracting Party.

(4) Ad Article 5 (i) When a dispute over the amount of compensation for expropriation between one Contracting Party and a national (or company) of the other Contracting Party has not been settled within six months from the date of request for settlement, the dispute may, upon the request of the national or company concerned, be submitted to: (a) the competent court of the Contracting Party which made the expropriation for decision; or (b) an ad hoc international arbitral tribunal for award. (ii) The ad hoc international arbitral tribunal mentioned above shall be established as follows: (a) Each party to the dispute shall appoint one arbitrator; the two arbitrators propose by mutual agreement a Chairman who shall be a national of a third State which has diplomatic relations with both Contracting Parties. The arbitrators shall be appointed within two months and the Chairman within four months from the date when one of the parties to the (dispute informed the other of its intention to submit the) dispute to arbitration. If the appointments are not within the period mentioned above, either party may invite the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce to make their required appointments. (b) The arbitral tribunal shall determine its own arbitral procedure. But it may, while determining its own procedure, make reference to the arbitral procedures of the Arbitration Institute of the Stockholm Chamber of Commerce or of the International Centre for the Settlement of Investment Disputes established according to the "Convention on the Settlement of Investment Disputes between States and Nationals of other States" concluded on March 18, 1965. (c) The arbitral tribunal shall reach its decision by a majority of votes. Its award shall be final and binding on both parties to the dispute, and shall be enforced by both Contracting Parties in accordance with the domestic laws. (d) The arbitral award shall be made in accordance with the domestic laws including the rules of conflict of the Contracting Party which accepts

investments and in accordance with the provisions in the present Agreement as well as the principles of international law generally recognized and adopted by both Contracting Parties. (e) Each party shall bear the cost of its own arbitrator and of its counsel in the arbitral proceedings. The cost of the Chairman and the remaining costs of the arbitral tribunal shall be borne in equal parts by both parties to the dispute.

(5) Ad Article 8 The term "without undue delay" within the meaning of Article 8 is deemed to be fulfilled, if a transfer is made, within such period as is normally required according to international financial custom and not later, usually, than six months.

(6) Ad Article 6 Reinvested returns shall enjoy the same protection as the original investment.

Done in duplicate at Rome on January 28, 1985 in Chinese, Italian and English languages. The three texts are equally authentic. If there is any dispute concerning the interpretation, the English text shall prevail.

For the Government of the People's Republic of China For the Government of the Republic of Italy (Chen Muhua) (Capria)